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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1905.

No. 268

AYER & LORD TIE COMPANY,
Plaintiff in Error.

vs.

THE COMMONWEALTH OF KENTUCKY, BY FRANK A. LUCAS REVENUE AGENT OF SAID COMMONWEALTH,
Defendant in Error.

In Error to the Court of Appeals of the State of Kentucky.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES E. KREMER,
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This is an action under Sec. 4241 of the Statutes of Kentucky, instituted by Frank A. Lucas, revenue agent, on behalf of the Commonwealth of Kentucky in the County Court of McCracken County, against the Ayer & Lord Tie Company, alleging that the latter was, on the 15th day of September, in the years 1899, 1900 and 1901, the owner of the Steamer Russell Lord of the value of $13,000, and the Steamer Inverness of the value of $10,000, and the Steamer Pavonia of the value of $3,000, and that

each of the said steamboats was enrolled in accordance with the laws of the United States at the port of Paducah, Kentucky, in the county of McCracken, and that the words "Paducah, Kentucky" were painted on the stern of said steamboats, and that when not in use they were kept at Paducah, and that the port of Paducah was the home port of these steamboats.

It was further alleged that each of the said boats was used for the purpose of towing ties loaded on barges, and that the company was also the owner of certain barges used in connection with said steamboats for the purpose of transporting railroad ties and that on the 15th day of September, in the years 1899, 1900 and 1901, they were of the value of $10,000.

It is also alleged that the defendant failed and refused to assess any of the said steamboats or barges, and that no taxes on the same had been paid for the said years, and the plaintiff therefore prays that the company may be assessed for the taxes at the port named, and that the defendant be also adjudged to pay a penalty of 20 per cent. on the aggregate amount of taxes due and interest, and to pay the costs in the proceeding.

The Ayer & Lord Tie Company, as a corporation of Illinois, at the September term offered to file its petition for removal of the cause to the United States Circuit Court, on account of diversity of citizenship, the record showing the following entry (Record, 1):

> "This day came defendant and offered to file petition for removal of this action to the United States Circuit Court and also offered to file bond under Act of Congress with H. Baker and

James Campbell, sureties thereon, to all of which plaintiffs object, and this case is continued."

The record does not show what was done by the County Court further than this entry.

On Sept. 26th, 1902, the Ayer & Lord Tie Company filed an answer in the County Court which alleges in substance: That it is a corporation organized on the 5th day of August, 1893, under the laws of the State of Illinois, and was authorized and empowered to transact business with steamboats engaged in interstate commerce, and that it has ever since its incorporation been engaged in business as the owner of tow boats plying on the Mississippi, Ohio, Tennessee and Cumberland Rivers and their tributaries, in interstate commerce in transporting railroad ties from different points on said river to the port of Brookport, Illinois, and that the said tow boats occasionally touched at the port of Paducah, Kentucky, but never to take on or discharge their cargoes, but simply for the purpose of buying stores, employing seamen and for other like purposes, and that the steamboats and barges are in the State of Kentucky temporarily, most of the business being in transportation from different ports in Alabama, Mississippi, Kentucky, Missouri, Arkansas, Illinois and Tennessee, to the port of Brookport, Illinois, St. Louis, Missouri, and Duval's Bluff, Ark., and that at such ports the tow boats discharge and deliver their cargoes of ties. The Ayer & Lord Tie Company admits the ownership of the steamboats and barges during the years 1899, 1900 and 1901.

It further alleges that its main office is in the City of Chicago, Ill., and that it has offices also at Mound

City and Brookport, Ill., and at Paducah and Fulton, Ky., and also one at Duval's Bluff, Ark.

The company also claims the right under the Act of Congress and the Constitution of the United States, to trade at Paducah, Ky., Brookport, Mound City and at other ports, free from molestation or interference by the State of Kentucky, and that the state has no jurisdiction over the defendant's boats or to try and determine the cause.

The Ayer & Lord Tie Company denies that the home port of the steamers was at Paducah during the years 1899, 1900 and 1901, and denies that the State of Kentucky has the right to assess the property for taxes, and alleges that the property was taxable under the laws of the State of Illinois, where the owner resided, and that during the years 1899, 1900 and 1901, all of the said property was assessed by the defendant in the State of Illinois for taxation, and that it has paid taxes under the laws of the State of Illinois to the state, and to the City of Chicago on all of its said property, and that the said steamboats were for convenience sake, under the Act of Congress, enrolled or registered at the Port of Paducah by H. Baker, the general manager of the transportation department of the Ayer & Lord Tie Company.

To this answer Lucas, on Sept. 27th, 1902, entered and filed a demurrer and upon a hearing upon the statement, answer and demurrer, the latter was overruled and the case dismissed against the defendant in the County Court, whereupon Lucas took an appeal to the Circuit Court of McCracken County.

Here the renewal of the motion to transfer the case to the United States Circuit Court was made and denied, and thereupon a hearing was had upon the statement, answer and demurrer, and the latter

was again overruled and the case dismissed. Thereupon Lucas took an appeal to the Court of Appeals of Kentucky, where the decision of the Circuit and County Courts was reversed.

Thereupon the Ayer & Lord Tie Company filed a petition for a rehearing (Record, page 46), which was also overruled and the case remanded. A new trial was then had and the finding of the Circuit Court of McCracken County was substantially: That the Ayer & Lord Tie Company was the owner of the Steamer Russell Lord, of the value of $13,000, Pavonia of the value of $10,000, Inverness of the value of $2,500, and the barges of the value of $10,000. That these steamboats were enrolled at Paducah, Ky., and had the name "Paducah" painted on their sterns, and that the Ayer & Lord Tie Company was a corporation legally incorporated under the laws of the State of Illinois.

The court held as a matter of law that Paducah, Ky., was the home port of the vessels and barges, and that the vessels were liable to assessment at the valuation as stated above. A decree was entered and from this the Ayer & Lord Tie Company prayed an appeal to the Kentucky Court of Appeals, where the decision of the Circuit Court of McCracken County was affirmed, and thereupon a writ of error was sued out from this court.

The Ayer & Lord Tie Company assigns as error:

1st. That the court erred in not permitting it to remove the case to the Circuit Court of the United States for the Western District of Kentucky from the McCracken County Court.

2nd. That the court erred in compelling the Ayer & Lord Tie Company to pay a tax on its steamboats, although engaged in interstate commerce, and that

such a decision is contrary to Sec. 8, Art. 1, of the Constitution of the United States.

3rd. That the court erred in its construction of sections 4141, 4178 and 4334 of the Revised Statutes of the United States, and erroneously, under the statutes, fixed the situs of appellants' property for taxation at Paducah, Kentucky.

ARGUMENT.

It will be observed at the outset that there is no dispute as to the facts in this case. The allegations in the answer of the Ayer & Lord Tie Company are, by the demurrer, conceded to be true, and they are not necessarily in conflict with the allegations of the plaintiff's statement or declaration. The facts substantially are:

1st. That the Ayer & Lord Tie Company is and was an Illinois corporation with its main or home office at Chicago, Illinois.

2nd. That the Steamers Russell Lord, Pavonia and Inverness are steam vessels enrolled and licensed, and engaged in interstate commerce upon the waters of the Ohio, Mississippi, Tennessee and Cumberland rivers, and their tributaries.

3rd. That they are enrolled and licensed at Paducah, Ky., and have "Paducah" painted on their sterns.

4th. That they were kept at Paducah according to plaintiff's statement, when not in use, and according to the answer, they came there solely for the purpose of taking on board supplies and shipping crews, and never to take on or discharge cargoes.

5th. That the barges are engaged in interstate commerce, being towed by the steamers, *but that they are not enrolled and licensed, and have not "Paducah" painted on their sterns, and are not at Paducah when not in use or at any other time.*

It will be observed that we are speaking here of two kinds of craft, the enrolled steamboats and the unenrolled barges, and for the purpose of this case we will dispose of the barges first.

It appears from the statement that these barges are used in connection with the steamboats for the purpose of transporting railroad ties, and therefore like them engaged in interstate commerce. There is no allegation in the statement or in the answer that these barges were ever at Paducah, or in any other place in Kentucky. They therefore have no actual situs in Paducah or Kentucky, and not being enrolled and licensed, and not having their names painted on the stern, as is the case with the steamboats, they are in no sense in Kentucky or assessable there, and therefore they can have no other situs than that of their owner. They have no actual situs in Kentucky, because not in the state, and no artificial situs by virtue of an enrollment and license, and therefore are not in Kentucky at all and cannot therefore be assessed there. Whether they have an actual situs elsewhere, or whether their situs is that of the domicile of their owner, is entirely immaterial in this case. It is therefore perfectly apparent that under no aspect of the case can these barges be assessed in Kentucky.

The case of the barges here comes clearly within the case of the *Commonwealth* v. *American Dredge Co.*, 122 Pa., 386. In that case there were a number of barges and dredges which were located in no particular place, and therefore had no actual situs, and

it was a question as to whether they should be taxed at the home port or domicile of the corporation that owned them or not, and the Supreme Court of Pennsylvania says:

> "It must be conceded that the property in question must be liable to taxation in some jurisdiction. If it were permanently located in another state, it would be liable to taxation there. But the facts show that it is not permanently located out of the state. From the nature of the busines, it is in one place to-day and in another to-morrow, and, hence not taxable in the jurisdiction where temporarily employed. It follows that if not taxable here, it escapes altogether. The rule as to vessels engaged in foreign or interstate commerce is that their situs for the purpose of taxation is their home port of registry, *or the residence of their owner, if unregistered. Pullman Palace Car Co.*, 29 Fed. Rep., 66; *Hays* v. *Pacific Mail Steamship Co.*, 17 How., 596. These vessels, if they may be so called, were not registered. Hence, their situs for taxation is the domicile of the owner. This rule must prevail in the absence of anything to show that they are so permanently located in another state as to be liable to taxation under the laws of that state."

These barges were exempt from enrollment or license under 21 Revised Statutes, p. 44. The statement does not allege that they ever were in Kentucky.

The answer alleges that they were engaged in interstate commerce between ports of different states.

Being unenrolled, they can only be taxed at the residence of the owner in Chicago, where their owner had them assessed and paid taxes on them.

As to so much of the decision of the Court of Appeals of Kentucky, there must be a reversal for it is indisputably erroneous.

II.

The gist of the decision of the Court of Appeals and its conclusion is, that as Paducah is the home port of the steamers in question, therefore that place is their situs for assessment and taxation.

The court does not find that Paducah is the actual situs of these vessels, but holds that Paducah is the home port of them because it is the place where they are enrolled and licensed, and because Paducah is painted on their sterns. This, their artificial situs, the court holds, is sufficient to subject the vessels to assessment and taxation there, regardless of the place of their ownership.

The court concedes that ordinarily the residence of the owner is the situs for taxation of personal property, but in this case the enrollment creates a different situs, and independent of the actual situs, holds it as a sufficient one. If, therefore, it should appear that these vessels were illegally enrolled and licensed at Paducah, and illegally had their names painted on the stern, then they had no legal situs at Paducah and it would follow that the Ayer & Lord Tie Company could only be assessed at Chicago, or at the place of the actual situs of the vessels, and therefore it was right in paying taxes upon these vessels at Chicago, the place of its domicile.

It is conceded that the steamers were subject to enrollment under the laws of the United States, and that section 4141 of the Revised Statutes applies to them, it being as follows:

> "Every vessel, except as hereinafter provided, shall be registered by the collector of that collection district which includes the port to which such vessel shall belong at the time of her registry; which port shall be deemed to be

> that at or nearest to which the owner, if there be but one, or, if more than one, the husband or acting and managing owner of such vessel, usually resides."

Under this statute the Ayer & Lord Tie Company could only register or enroll their steamers at a port nearest to that in which it resided. Their steamers therefore should have been enrolled at Chicago, where it resided, that being a port and at the same time the place of residence of the corporation. These vessels could only be enrolled in compliance with sections 4313 and 4314 as follows:

> "Sec. 4313. Enrollments and licenses for vessels owned by any incorporated company may be issued in the name of the president or secretary of such company; and such enrollments or licenses shall not be vacated or affected by any sale of shares of stock in such company.
>
> "Sec. 4314. Previously to granting enrollment and license for any vessel, owned by any company, the president or secretary of such company shall swear to the ownership of such vessel, by such company, without designating the names of the persons composing such company, which oath shall be deemed sufficient, without requiring the oath of any other person interested or concerned in such vessel."

It follows, therefore, that no other officer or agent of the corporation had a right to procure an enrollment and license for these steamers except as provided in these sections. It nowhere appears that Mr. Baker, who, the answer says, enrolled these vessels, was either president or secretary of the Ayer & Lord Tie Company. He was designated general manager of the transportation department of the

company. This would not enable him to enroll them at Paducah.

These steamers should, therefore, have been enrolled and licensed in Chicago, and if, at the expiration of their licenses, they were found away from Chicago, should have been enrolled and licensed under section 4328, which is as follows:

> "Whenever it becomes necessary for the owner of any vessel of the United States navigating the western rivers or the waters on the northern, northeastern and northwestern frontiers of the United States otherwise than by sea, and being in a district other than that to which such vessel belongs, to procure her enrollment and license, or license, or renewal thereof, the same proceedings may be had in the district in which the vessel then is, as are required by law on application for such enrollment and license, or license, or renewal thereof, as the case may be, in the district to which such vessel belongs, excepting the giving of bond and the enrollment and issuance of license; and the officer before whom such proceeding is had shall certify the same to the collector of the district to which such vessel belongs, who shall thereupon, on the owner giving bond as required in other cases, duly enroll the vessel and issue license in the same form as if the application had originally been made in his office; and shall either deliver the license to the owner, or forward it by mail to the officer who certified to him the preliminary proceedings; and in the latter case, such officer shall deliver the license to the owner or master of the vessel."

It should be noticed that the same proceeding must be had in the district in which the vessel then is, or temporarily is, as is required by law on application for such enrollment and license, in the district to

which such vessel belongs, excepting the giving of a bond.

It will be noticed that such a foreign enrollment could not be obtained without the oath of either the secretary or president. It can not be done by an agent.

The present enrollment having been obtained by one who was not the secretary or president, it follows that the vessels were illegally and improperly enrolled at Paducah, and having been so illegally and improperly enrolled there, it follows that painting the name "Paducah" on their stern was also illegal and improper.

The question of ownership and place of enrollment are, under the law, separate and distinct from the matter of the painting of the name on the stern. Before the passage of the Act of 1884, the name to be painted on the stern was provided for by section 4334.

> "Every licensed vessel shall have her name and the port to which she belongs painted on her stern in the manner prescribed for registered vessels; and if any licensed vessel be found without such painting the owner thereof shall be liable to a penalty of $20."

The Act of 1884, Sec. 4178, provides that the word "port," as used in Sec. 4178 and Sec. 4334, in reference to painting the name and port of every registered or licensed vessel on the stern of said vessels, shall be construed to mean either the port where the vessel is registered or enrolled, or the place in the same district where the vessel was built, or where one or more of the owners reside.

This law, therefore, changed the requirement that the home port, which is always the residence of the

owner, or rather, the port nearest to the residence of the owner, should be painted on the stern.

It is difficult to reconcile this statute with the statute requiring the enrollment of a vessel at the port nearest to the residence of the owner. The statute is misleading if it is intended that in every case the name should indicate the home port of the vessel. It provides for at least two instances in which it might not be the home port of the vessel. It therefore has nothing to do with the means of giving a situs to the vessel. The port painted on her stern may be many hundred miles from the place at which she is enrolled, because it can be the place where she was built, or it may be the name of the place where she is enrolled, and be many hundred miles from the place where her owner resides. The name on the stern, therefore, is no evidence of the real home port of the vessel. It does not necessarily indicate where the residence of the owner is.

The home port is the one fixed by law to be the port nearest to the one at which the owner resides, and in this case that was Chicago, and this name should have been painted upon the stern of these steamers. The barges were not required to be and were, therefore, not enrolled and licensed, and therefore did not have any name painted on their sterns.

There could only have been a temporary enrollment of the steamers in this case at Paducah under Sec. 4323, which is as follows:

> "When any vessel shall be in any other district than the one to which she belongs, the collector of such district, on the application of the master thereof, and upon his taking an oath that, according to his best knowledge and belief, the property remains as expressed in the register or enrollment proposed to be given up,

> and upon his giving the bonds required for granting registers, shall make the exchange of an enrollment for a register or a register for an enrollment; but in every such case, the collector to whom the register or enrollment and license may be given shall transmit the same to the Register of the Treasury; and the register, or enrollment and license, granted in lieu thereof, shall, within ten days after the arrival of such vessel within the district to which she belongs, be delivered to the Collector of the District, and be by him canceled. If the master shall neglect to deliver the register or enrollment and license within such time, he shall be liable to a penalty of one hundred dollars."

Under this section, however, only the master was authorized to obtain the enrollment and he must surrender it when the vessel arrives at her home port.

These steamers were not so enrolled and were, therefore, illegally enrolled by one who had no right to do so under the law.

This case clearly comes within the rule in the case of *Morgan* v. *Parham*, 16 Wall., 471. In that case the Steamer Francis was the property of Morgan, who resided at New York, where the vessel had been registered, but at the time she was assessed for taxation in Alabama, she had been regularly enrolled as a coaster at Mobile and this license had been renewed for several years while the vessel had been employed in a daily line of steamers plying between Mobile and New Orleans, her master being a resident of Mobile, and the agent of the steamer also residing at Mobile. This court held in that case that the Francis had not become incorporated into the personal property of the state, but was there only temporarily and was engaged in lawful commerce between two states with her situs at the home port of

New York, where her owner resided was liable to be taxed upon her value.

The court adds that whether the Steamer Francis was actually taxed in New York during the years 1866 and 1867, does not apply to the case and is not important, as she is liable to taxation there and therefore New York alone had dominion over her for that purpose, adding:

> "Alabama had no more power to tax her or her owner than Louisiana or Florida, Georgia and South Carolina would have had in the case I have supposed."

The court's conclusion it seems to us, virtually covers the present case:

> "The jurisdiction of this court over the present case, as in the case of *Hays* v. *Steamship Co.* (*supra*) arises from the facts; first, that the property had not become blended with the business and commerce of Alabama, but remained legally of and as in New York; and second, that the vessel was lawfully engaged in the interstate trade, over the public waters. It is in law as if the vessel had never before or after that day been within the port of Mobile, but touching there on a single occasion when engaged in the interstate trade, had been subjected to a tax as personal property of that city. Within the authorities it is an interference with the commerce of the country not permitted to the states."

There is also the case of *St. Louis* v. *Wiggins Ferry Co.*, 11 Wall., 423. In that case the ferries, plying between St. Louis, Mo., and E. St. Louis, Ill., were enrolled and licensed in and hailed from St. Louis, Mo., and it was contended by the city authorities that they were taxable in St. Louis. This

court, however, held that though enrolled and licensed in St. Louis, and ostensibly having their home port there (because, like in this case, the place of enrollment was painted on the stern), they were taxable in Illinois, the residence of the owner. St. Louis in that case was one of the two terminal points of these ferries, and practically half of the time the ferries were in Missouri or in Missouri waters, and there was therefore a greater reason for taxing them at the place of their artificial situs than in the present case. Paducah was not a port to which the vessels went for cargo or at which these steamers and barges ended their voyages by delivering their cargoes. It was like any other place at which they might stop for fuel and supplies, or to ship additional members of their crew. It was a mere port of call.

The most recent case in this court upon the question of the taxation of vessels, is the case of *Old Dominion S. S. Co.* v. *Virginia*, 198 U. S., 299. In that case the court held that certain steamers belonging to the Old Dominion Steamship Co., a Delaware corporation, could be taxed in Virginia because they plied exclusively between points and places in Virginia and practically spent all of their time in Virginia waters. They therefore acquired an actual situs in Virginia, and although they were registered and could have traded elsewhere the actual situs controlled.

The case of *Mayer et al., of Mobile*, v. *Baldwin*, 57 Ala., is in point. In that case a ferry boat plying between the City of Mobile and the eastern shore of Mobile Bay and in Alabama, was not taxable at the City of Mobile, although enrolled and licensed there, but was taxable at the residence of the owner.

which was on the eastern shore of Mobile Bay and not in the City of Mobile.

In the case of *Yost* v. *Lake Erie Trans. Co.*, 112 Fed. Rep., 746, the Court of Appeals for the 6th Circuit held that lake vessels owned by a Michigan corporation and enrolled in Michigan could not be taxed in Ohio where they were at least part of the time.

This case was decided by Judge Lurton and contains all of the citations of decided cases that have a bearing upon all the phases of the question of the taxation of vessel property engaged in interstate commerce.

Another test that can be applied in cases of this character, for the purpose of determining what the home port of a vessel is, are the class of cases that arise in the enforcement of liens for supplies and repairs furnished vessels at their home port. It is a familiar principle of maritime law that under the general maritime law there is no lien for supplies and repairs furnished a vessel in her home port, so when supplies and repairs have been furnished to a vessel in a port of the state to which she belongs or in which her owner resides, the lien, if any there be, is granted by the laws of such state.

The J. E. Rumbell, 148 U. S., 1.

It has been held in a number of cases that the home port of the vessel is not necessarily the port at which the vessel is enrolled and licensed, or the one that is painted on her stern in compliance with the United States statutes. The admiralty courts have invariably held that the residence of the owner determines the home port of the vessel, and not the

place of enrollment, or the place painted upon her stern.

The Lotus No. 2, 26 Fed. Rep., 637.

In this case the Steamer Lotus No. 2 was owned by a Mississippi corporation, with its place of business at Columbus, in that state. The vessel was enrolled in the Custom House at Mobile, Ala., and a mortgage on her executed by the owner was recorded there in accordance with the provisions of the United States statute. A number of creditors furnishing supplies to the steamer at Mobile claimed a lien in preference to that of the mortgagee. The latter, however, claimed that these supplies were furnished at the home port of the vessel (Mobile), the place of her enrollment, and therefore there was no lien under the maritime law and at most only a lien under the state law and the mortgage should, therefore, be preferred to the claims of the supplymen. Judge Bruce, however, held that notwithstanding the fact that the vessel was enrolled at Mobile under the United States statute, the home port nevertheless was Columbus, Miss., and therefore the claims for supplies were a lien under the maritime law, and not dependent upon the state law, and were therefore to be preferred to the mortgage.

In the case of the *Jenny B. Gilkey*, 19 Fed. Rep., 127, Judge Lowell says:

> "It has often been decided that the place of residence of the owners is to be considered the home port, even when the registration is in another state, if the facts of ownership were known or might have been known to the material men."

The same view is taken by Judge Brown of the Southern District of New York, in the case of the *Charlotte Vanderbilt*, 19 Fed. Rep., 219.

The Plymouth Rock, 14 Blatch., 505.
The Mary Chilton, 4 Fed. Rep., 457.
The E. A. Barnard, 2 Fed. Rep., 712.
The Golden Gate, Newb. Ad., 308.
The Martha Washington, 1st Cliff., 463.
The Thos. Fletcher, 24 Fed. Rep., 375.
The Chelmsford, 34 Fed. Rep., 399.
The Marion G. Harriss, 81 Fed. Rep., 964.
The Richard G. Garrett, 44 Fed. Rep., 379.

In the case of *The Havana*, 64 Fed. Rep., 496, the Court of Appeals, 2d Circuit, held that supplies furnished in New York to a steamer enrolled in New York, when owned by a New Jersey corporation, were entitled to a lien under the maritime law, and that her home port was not New York where she was enrolled.

In the light of these authorities it cannot be said that the home port of these vessels was Paducah. Had supplies been furnished them at Paducah and a conflict had arisen as to whether there should be a lien for such supplies under the laws of Kentucky, or under the maritime law, an admiralty court would have decided that the home port of these vessels was in Illinois, and that the supplies furnished at Paducah were entitled to a lien under the maritime law.

Under these decisions coming down to us for more than fifty years, determining, as they do, what the home port of an enrolled and licensed vessel is, it would be an anomaly for the court now to hold that in one class of cases the residence of the owner determines where the home port is, and in

another class of cases the home port is determined by the place of enrollment. Leaving out the question of whether the boats were legally or illegally enrolled in any place, the safer rule is one which fixes the residence of the owner as the home port of the vessel, rather than the one at which she may be enrolled and licensed.

Under the present law one of three different localities may be represented by the name on the stern of the steamer, and this therefore furnishes no reliable guide either as to her place of enrollment or her ownership. At every place of enrollment the ownership can be ascertained, and at the same time the residence of the owner, and therefore the home port can always be determined by an examination of the enrollment. The home port of these vessels was Chicago, where their owner resided, and not at Paducah, where they were enrolled.

The right to assess these vessels for taxation is based upon their enrollment at Paducah. The burden of showing this is upon the state or officer of the state who seeks to subject them to assessment. The state must therefore show where the home port is. If the home port is not in Kentucky, then they cannot be assessed there. The validity of the enrollment must appear if relied upon. If the enrollment is invalid or illegal, these vessels had no situs whatever in Kentucky.

The plaintiff is not estopped from claiming an invalid enrollment against the State of Kentucky because the state is in no way a party to such enrollment. This is a proceeding entirely between the Government of the United States and the Ayer & Lord Tie Co., which does not inure to the benefit or advantage of the state. The latter is a mere outsider, in no way interested in the matter of enroll-

ment, and therefore cannot invoke the rule of estoppel.

The State of Kentucky was in no way benefited by relying upon a legal enrollment. It cannot therefore be injured by the enrollment being held illegal.

It was at all times a stranger to the transaction.

The state must show a situs of the property in question.

Walker v. *Walker*, 9 Wallace, 755.
Marine N. Bk. v. *Fiske*, 71 N. Y., 353.
Myers v. *Cronk*, 113 N. Y., 608.
Monson v. *Tripp*, 81 Maine, 24.

In this case the steamboats had no actual situs. They were engaged in interstate commerce. They belonged to no one place. They were no part of the property in Kentucky. They were engaged in trading between places in different states upon different waters, and the court is called upon now to determine whether the artificial situs of these vessels, or the place of their ownership is to control the question of where they should be assessed and taxed.

We have been unable to find a single decided case in which the situs for taxation has been determined by the place of enrollment when the domicile of the owner was at a different place, and the vessels had no actual situs by lying or plying in one state or locality.

If such were to be permitted it would open the way for enrollment in places where the tax might be lower as against the place where the owner resided. In this case if taxes were lower at Paducah than at Chicago it would be more to the interest of the Ayer & Lord Tie Company to have its vessels enrolled at Paducah and pay taxes there rather than at Chicago. If, however, the place of enrollment is not to deter-

mine the place where the vessels may be assessed and taxed, then there is no opportunity for dodging the payment of the taxes, and the place is fixed in harmony with the well settled rules relating to personal property employed in interstate commerce.

In conclusion, the barges not being enrolled and having no actual or artificial situs in Kentucky, could not be assessed there.

The steamers, being illegally enrolled at Paducah, had not even an artificial situs there. Paducah was not their home port. The home port was Chicago, Illinois, and the Ayer & Lord Tie Company could only be assessed and taxed there for both steamers and barges.

It paid its taxes at Chicago as it should.

Respectfully submitted.

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JAS. CAMPBELL,
Attorneys for Plaintiff in Error.

Chicago, March, 1906.